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1952.

File No. O Emblems
Name: (P 7 11)/52

BRANCH

Subject:—

O Emblems

File No.

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C O N T E N T S

Legal Department Vol. No. O. Emblems and Names (Prevention Of Improper Use) Act, 1952.

Serial No.	R.I./O.No.	Subject	Pages.
		Opinions under the Emblems and Names (Prevention of Improper Use) Act, 1950.	
	O.Emnlems and Names (P.I.U.)/1950-51	Files not opened.	
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1	O.No. 318-Confl.2.4.52	Re: Prosecution for use of trade Mark resembling National Emblem. sec. 3 and 5 of the Emblems and Names (P.I.U.) Act, 1950.	1-2
2	R.I.No. 1037-Confl. 1-10-52 O.No. 1040-Confl. 10-10-52	Re: R.L.A.'s opinion No, 318-confl. dt. 2-4-52 Question regarding sanctdon for prosecution with the previous permission of G. of I.	3-4

SMR 25-6-56
2 Copies.

Office of the R.L.A.

Prosecution for use of trade mark resembling National Emblem

Emblem & Names (Prevention of Improper use) Act, 1950.

It has come to the notice of Government that Messrs. M. and T. Films Ltd., Andheri have been using as their trade mark a symbol with three lions which resembles the National Emblem. The firm was called upon to discontinue the use of this symbol but it is not agreable to do so on the ground that the trade mark is in use since 1947, and that they have spent over Rs. 5 lakhs on it. It is, therefore, proposed to prosecute the firm under the Emblems and Names (Prevention of Improper Use) Act, 1950 (No. XII of 1950), but before doing so, R.L.A. is requested to advise in the matter.

2. Section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950, enacts that notwithstanding anything contained in any law for tht time being inforce, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use, or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorised in this behalf by the Central Government. A breach of the provisions of section 3 is made pubishable under section 5. It is clear that the trade mark used by the company, a photograph of which is included in these papers is a colourable imitation of the National Emblem and prima facie an offence would be committed. It is, however, not clear whether the case would fall within any exceptions referred to in section 3. A reference

to Government of India would, therefore, appear necessaryxx before a prosecution is launched. Moreover, a prosecution under the Act requires sanction of the Central Government or of any officer authorised in this behalf by general or special order of the Central Government. In the circumstances that Government may be consulted in the matter.

Sd./- P.M.L.
1/4
Remembrancer of Legal Affairs.

U.R. tp D.D., No. 318-Confl.,
dated the 2nd April 1952.

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I.D. R.I. No. 1037-Confl.,
dated 1-10-52.

Submitted.

Please see R.L.A.'s opinion No. 318-Confl., dated 2-4-1952 at p. 9-10 ante. The Remembrancer of Legal Affairs has advised therein that the trade mark used by Messrs. M. and T. Films Ltd., was a colourable imitation of the National Emblem and that prima facie an offence was committed by the Company by using the same. The R.L.A., however advised that a reference to the Government of India should be made as it was not known whether the case would fall within any of the exceptions referred to in sec. 3 of the Act and also because a prosecution for the offence required C. of I's sanction. A reference was accordingly made to the Govt. of India and that Government has advised that the company has committed an offence and has accorded sanction to its prosecution which is to be instituted after a due warning. (Vide letter from Govt. of India, dated 25th August 1952 at p. 35 C/S.). The papers are now again shown to R.L.A. with ref. to the previous opinion.

2. The papers may be seen and returned. Government of India have concurred in the view taken by the R.L.A.

Sd./-
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Sd./- P.M.L.
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Remembrancer of Legal Affairs.

U.R. to D.D., No. 1040-Confl.,
dated the 10th October 1952.

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